



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0419]

RIN 1625-AA00

Safety zone; University of Cincinnati Bearcats Football

Fireworks; Ohio River, Mile 470.4-470.8; Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, surface to bottom, extending from Ohio River mile 470.4 to mile 470.8 at Cincinnati, Ohio. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during the University of Cincinnati Bearcats Football Fireworks. During the period of enforcement, no vessels may be located within this Coast Guard safety zone. Entry into this Coast Guard safety zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until

December 6, 2014. For the purposes of enforcement, actual notice will be used from September 12, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The scheduled enforcement times and dates for this rule are: from 9:30 p.m. until 11:30 p.m. on September 12 and 20; October 4 and 24; November 13; and December 6, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0419. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Petty Officer Kevin Cador, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513-921-9033 x2109, e-mail Kevin.L.Cador@uscg.mil or Petty Officer John Joeckel, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513-921-9033 x2114,

email John.R.Joeckel@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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|------|---------------------------------|
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard was made aware of the schedule for the University of Cincinnati Bearcats Football Fireworks on August 6, 2014. There are potential hazards associated with fireworks displays over

or on the Ohio River and a safety zone is required to protect persons and property on or near the waterway during the displays. Completing the NPRM process and providing notice and a comment period is contrary to the public interest because it would delay this rule and the immediate safety measures it provides. Additionally, the University of Cincinnati's game schedule and these fireworks displays are advertised to the local community by and through the University of Cincinnati organization. Delaying the safety zone effective date to complete the NPRM process would be impracticable as it would interfere with the advertised and planned for displays and would unnecessarily interfere with contractual obligations related to these events.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing a full 30 days notice would be impracticable and would unnecessarily delay the effective date of this rule. Delaying the effective date would also be contrary to public interest since immediate action is necessary to protect persons and property from potential hazards associated with fireworks displays over or on the Ohio River.

B. Basis and Purpose

Multiple fireworks displays are planned to conclude the University of Cincinnati Bearcats football games scheduled on September 12 & 20; October 4 & 24; November 13; and December 6, 2014. These displays will feature fireworks being launched from a barge located in front of the Paul Brown Stadium, between miles 470.4 and 470.8 on the Ohio River at Cincinnati, OH. The Coast Guard determined that a safety zone is necessary to keep persons and property clear of any potential hazards associated with the launching of fireworks on or over the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of the rule is to establish the necessary temporary safety zone to provide protection for persons and property, including spectators, commercial and recreational vessels, and others that may be in the area during the noticed fireworks display times from the hazards associated with the fireworks display on and over the waterway.

C. Discussion of the Final Rule

The COTP Ohio Valley is establishing a temporary safety zone from 9:30 p.m. to 11:30 p.m. on September 12 & 20; October 4 & 24; November 13; and December 6, 2014 for the University of Cincinnati Bearcats Football Fireworks. The fireworks will be launched from a barge located in front of the Paul Brown Stadium and the safety zone will include all waters between Ohio River miles 470.4 and 470.8 at Cincinnati, Ohio. The Coast Guard will enforce the temporary safety zone and may be assisted by other federal, state and local agencies and the Coast Guard Auxiliary. During the periods of enforcement, no vessels may transit into, through, or remain within this Coast Guard safety zone. Deviation from this safety zone may be requested by contacting the COTP Ohio Valley or other designated representative. Deviations will be considered on a case-by-case basis.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under

section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This temporary final rule establishes a safety zone that will be enforced for limited time periods following certain University of Cincinnati Bearcats Football home games. During enforcement periods, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP Ohio Valley or other designated representative. Based on the location, limited safety zone size, and short duration of each enforcement period, this rule does not pose a significant regulatory impact. Additionally, notice of this safety zone or any changes in the planned schedule will be made via Broadcast Notices to Mariners, Local Notices to Mariners, and/or Marine Safety Information Bulletins as appropriate. Deviation from this rule may be requested from the COTP Ohio Valley and will be considered on a case-by-case basis.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor between Ohio River miles 470.4 to 470.8 from 9:30 p.m. to 11:30 p.m. on September 12 & 20; October 4 & 24; November 13; and December 6, 2014.

This safety zone would not have a significant economic impact on a substantial number of small entities because it is limited in size and will be enforced for a limited time period following certain scheduled University of Cincinnati Bearcats Football home games. The Coast Guard will provide notice of enforcement and changes in the planned schedule through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Marine Safety Information Bulletins as appropriate.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we

want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone to protect persons and property from potential hazards associated with the scheduled University of Cincinnati Bearcats Football Fireworks taking place on or over the Ohio River. This rule is categorically excluded from further review under

paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. A new temporary safety zone §165.T08-0419 is added to read as follows:

§ 165.T08-0419 Safety Zone; University of Cincinnati Bearcats Football Fireworks; Ohio River, Mile 470.4-470.8,

Cincinnati, OH.

(a) Location. The following area is a temporary safety zone: all waters of the Ohio River, surface to bottom, from mile 470.4 to mile 470.8 on the Ohio River at Cincinnati, Ohio. These markings are based on the United States Army Corps of Engineers' Ohio River Navigation Charts (Chart 115 June 2010).

(b) Effective dates and enforcement periods. This safety zone is effective from September 12, 2014 through December 6, 2014, and will be enforced from 9:30 p.m. to 11:30 p.m. on the following dates: September 12 and 20; October 4 and 24; November 13; and December 6, 2014. For purposes of enforcement, actual notice will be given beginning September 12, 2014.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into, movement within, or departure from this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into, departure from, or movement within a regulated area must request permission from the Captain of the Port Ohio Valley or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley

at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

(d) Informational broadcasts. The COTP Ohio Valley or a designated representative will inform the public through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Marine Safety Information Bulletins as appropriate of the enforcement period for each safety zone as well as any changes in the planned and published dates and times of enforcement.

DATED: September 9, 2014.

R. V. TIMME,
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley.

[FR Doc. 2014-26427 Filed 11/05/2014 at 8:45 am;

Publication Date: 11/06/2014]